

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEOLA ADELENA STUART,

*Plaintiff,*

vs.

TRINIDAD MANRIQUEZ, SAPD  
OFFICER,

*Defendant.*

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CIVIL NO.  
SA-18-CV-00466-OLG

**ORDER SETTING INITIAL PRETRIAL CONFERENCE**

Before the Court is the above-styled and numbered cause of action, which was referred to the undersigned on July 12, 2019 for all pretrial proceedings after the District Court adopted the undersigned's report and recommendation and dismissed Plaintiff's claims against Defendants City of San Antonio and Officer Sweeney and reissued service as to Defendant Officer Manriquez [#54]. The record reflects that Officer Manriquez filed an answer on May 28, 2019 [#51]. Accordingly, pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court will set this case for an initial pretrial conference and order the parties to confer as required under Rule 26(f).

Also pending before the Court is Plaintiff's Motion for Appointment of Counsel [#48]. The Court will deny the motion. Courts may appoint counsel pursuant to 28 U.S.C. § 1915(e)(1) in IFP proceedings. Under § 1915(e)(1), the Court has discretion to appoint an attorney to represent a litigant in federal court, but there is no right to the automatic appointment of counsel in a civil case. *Akasike v. Fitzpatrick*, 26 F.3d 510, 512 (5th Cir. 1994); *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). Appointment of counsel in a civil case is considered a privilege, not a constitutional right, and should be allowed only in exceptional circumstances. *Lopez v. Reyes*,

692 F.2d 15, 17 (5th Cir. 1982) (citation omitted); *see Cupit*, 835 F.2d at 86. In evaluating whether the appointment of counsel is proper under § 1915(e), the district court considers the type and complexity of the case, the litigant's ability to investigate and present the case, and the level of skill required to present the evidence. *See Castro Romero v. Becken*, 256 F.3d 349, 354 (5th Cir. 2001). Plaintiff has not demonstrated that exceptional circumstances are present in her case or that, based on the record, appointment of counsel is appropriate under the applicable legal standards under 28 U.S.C. § 1915(e).

In light of the fact that Plaintiff is representing herself *pro se* in this action, the Court directs her to the following resources to assist her in prosecuting her case:

- The Federal Rules of Civil Procedure, available at: [www.uscourts.gov/file/rules-civil-procedure](http://www.uscourts.gov/file/rules-civil-procedure)
- This Court's Local Rules, available at <https://www.txwd.uscourts.gov/court-information/lcr-civil-rules/>
- The "Complete Pro Se Manual" which is available on the Court's website at: <https://www.txwd.uscourts.gov/filing-without-an-attorney/>.

Plaintiff is directed to familiarize herself with these resources. Also, although *pro se* litigants are held to a less stringent standard, they are nevertheless required to follow the rules that govern all litigants in federal court. *Grant v. Cuellar*, 59 F.3d 524, 524 (5th Cir. 1995). These rules include but are not limited to the rules and Court orders regarding conference with opposing counsel, following deadlines imposed by the rules and the Court's Scheduling Order, observing the response times for nondispositive and dispositive motions as set forth in Local Rule CV-7(e), and keeping the Court updated with a current address to ensure all filings are received.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Appointment of Counsel [#48] is **DENIED**.

**IT IS FURTHER ORDERED** that, pursuant to Rule 16 of the Federal Rules of Civil Procedure, this case is **set** for an **Initial Pretrial Conference** at **1:30 p.m.** on **August 28, 2019**, in Courtroom B on the 4<sup>th</sup> Floor of the John H. Wood, Jr. United States Courthouse, 655 E. Cesar Chavez Boulevard, San Antonio, Texas, 78206.

At the conference, the Court will enter a Scheduling Order in this case and assign the parties a date for a jury or bench trial. Plaintiff and counsel for Defendant Manriquez may appear by phone for the conference. Counsel should contact Valeria Sandoval, the Courtroom Deputy, for call-in information at [chestney\\_chambers@txwd.uscourts.gov](mailto:chestney_chambers@txwd.uscourts.gov). The use of speaker phones is prohibited during a telephonic appearance.

**IT IS FURTHER ORDERED** that the parties confer in the manner required by Rule 26(f) of the Federal Rules of Civil Procedure and submit a Joint Discovery/Case Management Plan that answers the following questions no later than **Monday, August 26, 2019**:

1. Are there any outstanding jurisdictional issues? For removed cases based on diversity jurisdiction, do the parties agree that the amount in controversy exceeded \$75,000 at the time of removal? If not, each party should state its position on the amount in controversy.
2. Are there any unserved parties? If more than 90 days have passed since the filing of the Complaint or petition, should these unserved parties be dismissed?
3. What are the causes of action, defenses, and counterclaims in this case? What are the elements of the cause(s) of action, defenses, and counterclaims pled?
4. Are there any agreements or stipulations that can be made about any facts in this case or any element in the cause(s) of action?
5. State the parties' views and proposals on all items identified in Fed. R. Civ. P. 26(f)(3).
6. What, if any, discovery has been completed? What discovery remains to be done? Have the parties considered conducting discovery in phases?
7. What, if any, discovery disputes exist?
8. Have the parties discussed the desirability of filing a proposed order pursuant to Federal Rule of Evidence 502?
9. Have the parties discussed mediation?

The Court will address the substance of the parties' joint report and discovery plan at the Initial Pretrial Conference.

**IT IS FURTHER ORDERED** that the parties submit a **proposed scheduling order** pursuant to Local Rule CV-16(c), no later than **Monday, August 26, 2019**. The Court will discuss with the parties any proposed changes to the Court's standard scheduling order based on the unique circumstances of this case at the Initial Pretrial Conference.

The proposed scheduling order shall contain suggestions for the following deadlines:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 (the standard period being 90 days after the first defendant's appearance).
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties (the standard period being 90 days after the first defendant's appearance), and each opposing party shall respond, in writing (the standard period being 104 days after the first defendant's appearance).
3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by (the standard period being 120 days after the first defendant's appearance).
4. All parties asserting claims for relief shall file their designation of testifying experts and shall **SERVE ON ALL PARTIES, BUT NOT FILE the materials required by FED. R. CIV. P. 26(a)(2)(B)** by (the standard period being 90 days before the discovery deadline). Parties resisting claims for relief shall file their designation of testifying experts and shall **SERVE ON ALL PARTIES, BUT NOT FILE the materials required by FED. R. CIV. P. 26(a)(2)(B)** by (the standard period being 45 days before the close of discovery). All designations of rebuttal experts shall be filed within 14 days of receipt of the report of the opposing expert.
5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within (the standard period being 30 days) days of receipt of the written report of the expert's proposed testimony, or within (the standard period being 30 days) days of the expert's deposition, if a deposition is taken, whichever is later.
6. The parties shall complete discovery (the standard period being six months after the first defendant's appearance). Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.
7. All dispositive motions shall be filed (the standard period being 30 days after the discovery deadline). Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions shall be limited to (the standard page limit for this Court is 20) pages in length.

8. This case is set for jury selection and trial or bench trial on \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m.  
The final pretrial conference is set for \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m.

The parties shall submit the proposed order in a form similar to the attached.

**IT IS SO ORDERED.**

SIGNED this 16th day of July, 2019.



ELIZABETH S. ("BETSY") CHESTNEY  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

vs.

*Plaintiff,*

*Defendant.*

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**SCHEDULING RECOMMENDATIONS**

The parties recommend that the following deadlines be entered in the scheduling order to control the course of this case:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by \_\_\_\_\_.

2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by \_\_\_\_\_, and each opposing party shall respond, in writing, by \_\_\_\_\_.

3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by \_\_\_\_\_.

4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by \_\_\_\_\_. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by \_\_\_\_\_. All designations of rebuttal experts shall be designated within 14 days of receipt of the report of the opposing expert.

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within \_\_\_\_ days of receipt of the written report of the expert's proposed testimony, or within \_\_\_\_ days of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before \_\_\_\_\_. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed no later than \_\_\_\_\_. Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions shall be limited to \_\_\_\_\_ pages in length.

8. This case is set for jury selection and trial or bench trial on \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m. The final pretrial conference is set for \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m. The parties shall consult Local Rule CV-16(e)-(g) regarding matters to be filed in advance of trial.

9. All of the parties who have appeared in the action conferred concerning the contents of the proposed scheduling order on and the parties have (agreed/disagreed) as to its contents. The following positions and reasons are given by the parties for the disagreement as to the contents of the proposed scheduling by \_\_\_\_\_. Plaintiff offers the following explanation of why all parties have not been served \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name)

ATTORNEY FOR

\_\_\_\_\_  
(Print or type name)

CERTIFICATE OF SERVICE